A.F.R.

(63)

HIGH COURT OF CHHATTISGARH AT BILASPUR
SB: HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
CRIMINAL APPEAL NO.1099 OF 2002

Melaram, s/o. Bedram Sahu
aged about 20 years, r/o. village
Dhurwa Kari, Police Chowki
Pachpedi, PS Masturi,
Dist. Bilaspur.

versus

State of Chhattisgarh
Through PS Masturi,
Dist. Bilaspur. (CG).

POST FOR JUDGMENT 30/08/2005

Sd/-
V.K. Shrivastava
Judge

JUDGE
25/08/2005

(4G)

HIGH COURT OF CHHATTISGARH: BILASPUR
SB: HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
CRIMINAL APPEAL NO. 1099 OF 2002

Appellant :

Malaram
s/o. Bedram Sahu,
aged about 20 years,
r/o. village Dhurwa
Kari, Police Chowki
Pachpedi,
Police Station Masturi,
Dist. Bilaspur (CG)

Vs.

Respondent:

State of Chhattisgarh,
Through PS Masturi,
Dist. Bialspur (CG).

PRESENT:

Shri Ramakant Pandey, Counsel for appellant.

Shri J.D. Bajpai, Additional Public Prosecutor with Shri D.K. Gwalre, Panel Lawyer for the respondent/State.

J U D G M E N T

(Delivered on 30 /08/2005)

This appeal is directed against the judgment of conviction and order of sentence passed by Vth Additional Sessions Judge, Bilaspur, on 27/09/2002 in S.T.No.272/2002 whereby the appellant has been held guilty for committing the offence of rape punishable under Section 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, and in default of payment of fine to undergo additional rigorous imprisonment for one month.

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2) On 06/03/2002 at around 7.30 p.m. Ku. Laxmin Yadav, daughter of Shri Baran Lal Yadav aged about 19 years was alone in her house. Her grand-mother Chhedin Bai had gone to call Dhanmat. Appellant who is close neighbour of the prosecutrix Ku. Laxmin Yadav, entered inside her house, caught hold and led her on the ground. He closed her mouth by putting one hand and by other hand he removed and torned her clothes and underwear of the prosecutrix and thereafter by force committed intercourse with her and ran-away. Ku. Laxmin Yadav a disabled girl having Polio affected leg, could not able to resist the act of appellant. Her grand mother Chhedin Bai came after the incident. Prosecutrix Ku. Laxmin Yadav narrated the whole story to her grandmother and also narrated the same to other persons living in the vicinity of her house. On the next day, her grand-father Thanwar came to whom she narrated the incident and accompanying with her grand father Thanwar, went to Police Chowki Pachpedi and lodged first information report against the appellant. Police after recording first information report investigated the matter. Both appellant and prosecutrix were got medically examined. Clothes were seized from the prosecutrix. Medical Officer, who examined the appellant, after examination, prepared slides from smegma and sent the slides, underwear and pubic hairs along with his report to Police. Lady medical officer Dr. Mamta Saluja on examination of Ku. Laxmini Yadav, found various injuries on her body. She described all those injuries in her report. She prepared two slides from vaginal smear as also collected pubic hairs and sent all those articles along with her report to Police. All the slides, pubic hairs and clothes were sent to F.S.L., Bilaspur for chemical examination.

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Statements of witnesses under Section 161 of the Cr.P.C., were recorded. Chemical examiner on examination found blood stains in Salwar, Kurta and Cheddi of Ku. Laxmin Yadav. On chemical examination seminal stains and spermatozoa were also found on Salwar, Kurta and underwears of prosecutrix and appellant. After due investigation challan was filed in the Court of Judicial Magistrate First Class, Bilaspur, who committed the case to Sessions for trial.

3) Charge under Section 376 of the I.P.C., was framed against the appellant which was read over and explained to him who abjured his guilt and claimed to be tried. His defence was that he is innocent and he has been falsely implicated in the case.

4) Learned trial Court, after evaluating the evidence on record, held that on 6/3/2002 at about 7.30 p.m. in the night the appellant without consent and will of the prosecutrix- Ku. Laxmin Yadav by force committed intercourse with her and thereby committed the offence punishable under Section 376 of the I.P.C., and hence sentenced the appellant as mentioned above.

5) Both the parties are heard and record of trial Court perused.

6) PW/2 Ku. Laxmin Yadav in her statement has deposed that on 06/03/2002 at about 7.30 p.m. she was alone in her house. Appellant entered inside the house, lifted her and threw her on the ground. He closed her mouth and torned her Salwar,

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Kurta and Chaddi. Appellant forcibly committed intercourse with her and thereafter ran away. She is suffering from Polio, therefore, she could not resist the forcible sexual assault. After some time her grand mother came, she narrated the whole story to her grand mother and also narrated the same to Mothwa Yadav, Ramayan yadav and Panchu Yadav. Her grand father came next day. She along with her grand father went to Police Chowki and reported the incident to Police on the next day. She received injuries on her both cheeks and legs, caused by the appellant. Chhedin Bai (PW/3) who is the grand mother of prosecutrix, has deposed in her statement that on the date of incident at around 7.30 p.m. she had gone to call Dhanmat. After half an hour she came back to her house and found that Ku. Laxmin Yadav was weeping. On being enquired she told that Malaram committed rape on her. She saw the Salwar and Kurta in torned condition having blood stained. Next day her husband came. The incident was narrated to him and Ku. Laxmin Yadav accompanying with her grandfather reported the matter to Police.

7) Thanwar (PW/4) who is grand father of Ku. Laxmin Yadav, deposed in his statement that when he came back, Ku. Laxmin Yadav told him that Malaram pressing her mouth, led her on the ground and did illicit act. He took Ku. Laxmim Yadav to Police Chowki where Ku. Laxmin Yadav reported the matter to Police.

8) Panchu Yadav (PW/5) who is living in the vicinity has deposed that at about 10.00 p.m. Chhedin Bai came to his house.

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He accompanied with Chhedin Bai had gone to her house where Ku. Laxmin Yadav told that Melaram had committed rape on her.

9) Ex.P/2 is the first information report lodged by Ku. Laxmim Yadav (PW.2). Ex.P/2 has been proved by Ku. Laxmin Yadav (PW/2) and Madholal (PW/7). Ku. Laxmin Yadav (PW/2) was sent for medical examination and was examined by Dr. Mamta Saluja (PW/1) who in her statement stated that on 17/03/2002 she examined Ku. Laxmin Yadav and found the following external injuries on her body.

i) abrasion 1 cm x ½ cm on right cheek

ii) abrasion 1 cm x ¼ cm on left cheek

iii) abrasion 5 cm long o.1 cm wide on right leg .

10) All the aforesaid witnesses have been tested by the cross examination, but nothing substantial in their cross examination has been brought so as to discredit their version. Therefore, their version is credible, reliable and can be accepted as true.

11) On chemical examination blood stains were found on the Salwar, Kurta and vaginal slides of prosecutrix. On chemical examination seminal stains and spermatozoa were also found on the Salwar, Kurta and underwear of prosecutrix and underwear of the appellant. No explanation has been offered by the appellant regarding presence of human semen in his underwear. Presence of semen in undergarments of prosecutrix and appellant also support the statements of witnesses. Nothing suggestive indicating

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false implication against appellant in the alleged crime has been brought by the appellant.

12) The evidence of prosecutrix Ku. Laxmin Yadav inspires confidence and also her statement is corroborated by other oral evidence. Her statement also finds supports from medical evidence, first information report and the presence of seminal stains and spermatozoa on her undergarments and undergarments of appellant, therefore, from all these evidence it was established that the appellant without her consent and will forcibly committed intercourse with her and the learned trial Court on meticulous evaluation of the evidence on record holding the appellant guilty for committing offence punishable under Section 376 of the I P.C. and awarding sentence to appellant for offence punishable under Section 376 of the I.P.C., to undergo R.I. for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo additional R.I. for one month, has not committed error which may be liable to be interfered with by this Court under its appellate jurisdiction.

13) In the result, the appeal fails and is dismissed and the conviction and sentence passed by the trial Court are maintained.

Sd/-
V.K. Shrivastava
Judge
30/08/2005

Raju